

**BAY COUNTY BOARD OF CANVASSERS
RECOUNT RULES FOR CO. SHERIFF/2ND DIST. COMMISSIONER**

THE BAY COUNTY BOARD OF CANVASSERS MET ON FRIDAY, AUGUST 30, 1996 IN THE FOURTH FLOOR JURY ROOM OF THE BAY COUNTY BUILDING. THE PURPOSE OF THE MEETING WAS TO DISCUSS THE GUIDELINES THAT WOULD BE FOLLOWED DURING THE RECOUNT OF VOTES CAST IN THE AUGUST PRIMARY ELECTION FOR THE OFFICE OF BAY COUNTY SHERIFF. IN ADDITION, FOR THE RECOUNT OF VOTES CAST FOR THE OFFICE OF SECOND DISTRICT COUNTY COMMISSIONER COVERING THE TOWNSHIPS OF KAWKAWLIN, BEAVER, WILLIAMS/CITIES OF AUBURN AND MIDLAND. CHAIRMAN CHEVALIER CALLED THE MEETING TO ORDER AT 9:05 A.M. WITH THE FOLLOWING MEMBERS AND GUESTS PRESENT.

ROLL CALL: DONALD CHEVALIER, CHAIRMAN
 WALT WOZNIAK, MEMBER
 WILSON BERGER, MEMBER

OTHER BARBARA ALBERTSON, BAY COUNTY CLERK
MEMBERS: CYNTHIA A. LUCZAK, SECRETARY TO THE CLK.
 DOLORES NIEDZINSKI, CANVASS ASSISTANT

ALSO JOSEPH SHEERAN, BAY CO. PROSECUTOR
PRESENT: JIM WOODS, SHERIFF CANDIDATE
 LLOYD PAJOT, COMMISSION CANDIDATE
 RICHARD BRZEZINSKI, FOR J. MILLER
 LEONARD PORTNOY, FOR J. MILLER
 BOB REDMOND, FOR J. MILLER
 PETER DAHM, ATTNY FOR J. WOODS
 JANET NEWSHAM, SHERIFF DEPT.

CHAIRMAN CHEVALIER ANNOUNCED THAT TODAY'S MEETING WAS CALLED FOR THE PURPOSE OF ESTABLISHING THE GUIDELINES AND STANDARD PROCEDURES TO BE FOLLOWED IN THE RECOUNT OF VOTES FROM THE AUGUST 1996 PRIMARY ELECTION.

THE RECORD WAS TO FURTHER REFLECT THE TEMPORARY RELINQUISHING OF THE DUTIES OF RICHARD BRZEZINSKI ON THE BOARD OF CANVASSERS FOR THIS RECOUNT. MR. BRZEZINSKI HAD ACTED AS CAMPAIGN TREASURER FOR CANDIDATE JOHN MILLER WHICH THEREFORE POSED A CONFLICT OF INTEREST IN THIS PROCEDURE. TALLY CLERK DOLORES NIEDZINSKI WAS TO BE TEMPORARILY SEATED ON THE BOARD OF CANVASSERS TO ASSIST IN THE PLACE OF MR. BRZEZINSKI. PROSECUTOR SHEERAN INDICATED THE STATE STATUTE FOR THE APPOINTMENT OF ANOTHER MEMBER TO THE BOARD OF CANVASSERS WAS NOT APPLICABLE, SINCE THE REMAINING

THREE (3) MEMBERS OF THE BOARD STILL CONSTITUTED A QUORUM. IN A CASE WHERE A QUORUM WAS NOT PRESENT, THE COUNTY CLERK MAY MAKE AN APPOINTMENT OF ANOTHER MEMBER BUT IT WAS NOT NECESSARY IN THIS CASE. MR. SHEERAN FURTHER EXPLAINED STATE STATUTE MCLA 168.24 (E) IN REGARD TO THE VOTING OF THE MEMBERS. ALL THREE (3) MEMBERS WERE ALLOWED TO VOTE BUT ONE MEMBER OF EACH PARTY HAD TO CONCUR WITH THE RECOMMENDED ACTION FOR IT TO BE IMPLEMENTED/DECIDED UPON.

CHAIRMAN CHEVALIER STATED HE HAD HOPED A FOURTH VOTING MEMBER BE APPOINTED BY THE CLERK TO SERVE ON THE BOARD OF CANVASSERS IN ORDER TO MAINTAIN THE REPRESENTATION OF TWO (2) MEMBERS FOR EACH RESPECTIVE PARTY AFFILIATION. HE KNEW THE STATE LAWS COVERED THE PROVISIONS OF ABSENT MEMBERS DEPENDING ON THE SITUATION.

PROSECUTOR SHEERAN RESPONDED, THE STATUTE GRANTED THE NAMING OF "HELPERS" FOR THE BOARD OF CANVASSERS BUT THAT AN ACTUAL APPOINTMENT FOR MR. BRZEZINSKI'S TEMPORARY RESIGNATION WAS NOT WARRANTED.

THE CHAIRMAN REQUESTED A MOTION BE ADOPTED: **MOTION #1**
WALT WOZNAK MOVED THAT THE BAY COUNTY BOARD OF CANVASSERS ADOPT THE STATE OF MICHIGAN RECOUNT LAWS AND PROCEDURES. IT WAS SUPPORTED BY WILSON BERGER AND CARRIED BY VOICE VOTE OF 3 YEAS, 0 NAYS.

CHAIRMAN CHEVALIER TOLD MEMBERS AND GUESTS THAT THE RECOUNT SCHEDULED TO BEGIN ON TUESDAY, SEPTEMBER 3, 1996, WOULD BE CONDUCTED IN THE SAME MANNER AS HAD BEEN DONE IN THE PAST. EVEN THOUGH THE VOTES COULD BE RECOUNTED BY MACHINES, IT WAS THE RECOMMENDATION OF THE STATE (AND CONCURRENCE OF THE BAY CO. BOARD OF CANVASSERS) TO COUNT THE BALLOTS MANUALLY AS DONE IN PREVIOUS RECOUNTS. WILSON BERGER STATED THE BALLOTS HAD BEEN COUNTED BY THE VOTING MACHINES ONCE ALREADY AND THAT THE PHYSICAL OBSERVATION WOULD POSE LESS CHANCE FOR ERROR.

THE RECOUNT OF VOTES WAS TO BE PERFORMED BY TWO (2) SEPARATE TEAMS. EACH TEAM WOULD CONSIST OF ONE DEMOCRATIC MEMBER, ONE REPUBLICAN MEMBER AND TWO TALLY CLERKS TO TABULATE. IT WAS THEREFORE RECOMMENDED, CANDIDATES PROVIDE CHALLENGERS FOR EACH TEAM RECOUNTING VOTES.

POLL BOOK INFORMATION WAS TO BE VERIFIED BEFORE A RECOUNT MAY BEGIN. WORKERS WOULD VERIFY THE SEAL NUMBER WITH THE POLL BOOK BEFORE REMOVAL OF SUCH FROM THE BALLOT CAN. ONCE INSIDE THE CAN, THE BALLOT BAG SEAL NUMBER WOULD BE CHECKED IN THE SAME MANNER. SHOULD A DISCREPANCY SURFACE, MEMBERS WOULD ONLY BE AUTHORIZED TO COUNT THE NUMBER OF BALLOTS INDICATED. IF THE POLL BOOK DID NOT CONTAIN A RECORD OF THE SEAL NUMBERS, THE TOTALS FOR THE PRECINCTS STAND AS COUNTED AND CERTIFIED BY THE BOARD DURING THEIR INITIAL CANVASS.

ATTORNEY PETER DAHM QUESTIONED IF THE RULES WERE DIFFERENT FOR THE OPTECH SYSTEM NOW UTILIZED IN BAY COUNTY. HE POINTED OUT THE STATE RULES HAD BEEN AMENDED IN 1995 REGARDING RE-COUNTS AND IF IT HAD EFFECTED THE "2 OUT OF 3 RULE" APPLICATION.

CLERK ALBERTSON NOTED THE RULES ADOPTED BY THE BOARD OF CANVASSERS WERE THOSE OF THE STATE FOR PAPER BALLOTS AND PUNCH CARDS.

PROSECUTOR SHEERAN INFORMED EVERYONE THE STATE STATUTE HAD BEEN AMENDED TO INCLUDE THE OPTECH BALLOTS AND HOW A REVIEW OF THESE WAS TO BE CONDUCTED IN THE CASE OF A RECOUNT. FURTHER, MICHIGAN WAS NOT A VOTER "INTENT" STATE AND MARKINGS MUST BE CLEAR ENOUGH TO EXPRESS THE VOTE CAST AND NOT AN INTENDED VOTE. ONCE BALLOT MARKINGS WERE CLEAR TO THE BOARD, THE VOTES WERE TO BE TALLIED BY THE CLERKS.

DURING THE DISCUSSION OF THE TALLY CLERKS, IT WAS MADE CLEAR THE TALLY CLERKS WOULD CHECK THEIR MARKS AND TOTALS AFTER EVERY PILE OF BALLOTS. VOTES CAST FOR THE CANDIDATES WERE TO BE READ OUT LOUD BY THE CANVASSERS. A CHALLENGE MAY THEN BE EVIDENCED BEFORE THE ACTUAL MARKINGS WERE MADE BY THE TALLY CLERKS. IT WAS ALSO NOTED, ONCE A CHALLENGE WAS MADE, THE BALLOT WOULD BE PLACED ASIDE AND NOT COUNTED UNTIL THE ENTIRE PRECINCT WAS FINISHED AND A DETERMINATION MADE BY THE BOARD FOLLOWING THE SCRUTINIZING OF THE MEMBERS. THE CLERK WAS TO ASSIGN EACH CANDIDATE A DIFFERENT COLORED PAPER IN WHICH TO TELL THE DIFFERENCE IN THE CHALLENGED BALLOTS.

WITH THE THREE (3) MEMBER BOARD, AN AFFIRMATIVE VOTE FROM EACH RESPECTIVE POLITICAL PARTY MUST BE CAST, FOR THE RULING OF THE BOARD TO BE ACCEPTABLE. SHOULD THE BOARD MEMBERS FIND A CONCURRENCE IMPOSSIBLE TO ACHIEVE, CHAIRMAN CHEVALIER STATED A

LEGAL OPINION MAY BE RENDERED IF NECESSARY. BOARD MEMBERS WERE TO FIRST REVIEW ALL OF THE MARKINGS ON THE BALLOT AS DIFFERENT SITUATIONS WERE TO ALLOW DIFFERENT COURSES OF BOARD ACTION.

AS THE OPTECH VOTING MACHINE WAS CAPABLE OF CASTING A VOTE FOR A CANDIDATE BY THE MARKINGS AS SMALL AS A "DOT" IN THE TARGET AREA, MR. DAHM WONDERED HOW BIG OR SMALL THE DOT MAY BE IN ORDER FOR A VOTE TO BE REGISTERED PROPERLY OR CONSIDERED AN OVERVOTE BY THE PERSON APPLYING THE MARKS. PROSECUTOR SHEERAN ASSURED MR. DAHM THAT THE BALLOT MARKINGS IN A CASE LIKE THIS WOULD BE CAREFULLY OBSERVED TO DETERMINE THE INTENT OF THE VOTER. A "DOT" IN A TARGET AREA OF ONE BALLOT MAY BE A VALID BALLOT MARKING BUT THE SAME "DOT" ON ANOTHER BALLOT WHEREBY THE VOTER MAY HAVE PREFERRED SOLID LINES, MAY NOT BE RECORDED AS A VOTE BUT RATHER AN OVERVOTE. EACH SITUATION MAY POSE A THOUGHT THROUGH DECISION.

CHAIRMAN CHEVALIER REMINDED MEMBERS AND GUESTS THAT MICHIGAN WAS NOT A "VOTER INTENT" STATE. MR. SHEERAN QUOTED MCLA 168.799 A (3) WHICH ADDRESSED THE INTENTION ISSUE FOR OPTECH EQUIPMENT. SHOULD A VOTER CIRCLE A CANDIDATES NAME (REFLECTING AN INTENT), BUT WITH NO PART OF THE CIRCLE EVIDENCED IN THE TARGET AREA, WAS NOT TO BE COUNTED AS A VOTE-THE MARK MUST BE IN THE TARGET AREA.

LEONARD PORTNOY, REPRESENTATIVE FOR MR. MILLER, INQUIRED AS TO THE EXACT TARGET AREA THAT WAS REFERENCED IN THE DISCUSSION. IT WAS THE AREA BETWEEN THE TWO PORTIONS OF THE BROKEN ARROW TO THE RIGHT OF EACH CANDIDATES NAME. EACH SITUATION MAY ONCE AGAIN, POSE A DIFFERENT DECISION ACCORDING TO DON CHEVALIER.

THE PROBABILITY OF WRITE-IN VOTES WAS ALSO DISCUSSED AT THE RECOMMENDATION OF THE COUNTY CLERK. DURING THE INITIAL CANVASS, BOARD OBSERVED SITUATIONS WHERE A LINE WAS DRAWN IN A TARGET AREA PLUS THE VOTER INSERTED THE CANDIDATES NAME FOR A WRITE-IN VOTE. FURTHER, WRITE-IN VOTES WERE CAST FOR BOTH "JOHN MILLER" AND "JOHN E. MILLER". THESE TYPES OF VOTES WERE TO BE WATCHED FOR DURING THE RECOUNT PROCESS AND DETERMINATION OF AN OVERVOTE OF THE BALLOT MADE AT THAT TIME. THE CHAIRMAN WAS WILLING TO CONSULT THE STATE RULES IN THESE INSTANCES SHOULD THE VOTER INTENT REMAIN UNCLEAR BUT THE RULES DID NOT ADDRESS EVERY UNIQUE SITUATION.

THE RECOUNT OF BALLOTS FOR THE BAY COUNTY SHERIFF AND SECOND (2ND) DISTRICT COUNTY COMMISSIONER (REDER AND PAJOT) WERE TO BE HELD AT THE SAME TIME. THE SECOND COMMISSION DISTRICT INCLUDED THE CITIES OF AUBURN/MIDLAND AND TOWNSHIPS OF BEAVER, KAWKAWLIN AND WILLIAMS. A PUNCH CARD SYSTEM WAS UTILIZED IN THE CITY OF MIDLAND AND COVERED ONLY A SMALL PORTION OF BAY COUNTY. CLERK ALBERSTON ESTIMATED APPROXIMATELY TEN (10) OF THE PUNCH CARDS WERE TO BE REVIEWED FOR THIS RECOUNT.

MR. DAHM RAISED THE ISSUE OF DUPLICATED BALLOTS BY THE ELECTION WORKER AND WHETHER OR NOT IT WAS THE CANVASSERS' INTENT TO REVIEW THE FINAL DECISION OF THE WORKERS IN THESE CASES. MR. WOZ-
NIAK TOLD MR. DAHM THE DUPLICATED BALLOTS BY THE POLL WORKER WOULD BE MATCHED TO THE ORIGINAL BALLOT. THE ORIGINAL BALLOTS WERE TO BE PLACED IN A SEPARATE SEALED ENVELOPE. THE DUPLICATES WERE TO BE MARKED CORRESPONDING "DUPLICATE" AND PLACED WITH THE REGULAR BALLOTS FOR TABULATION BY THE OPTECH SCANNER. IF THE BALLOTS HAD NOT MATCHED, THE BOARD MAY DETERMINE THE ORIGINAL A OVERVOTE, UNDERVOTE OR CROSSVOTED BALLOT. WILSON BERGER NOTED, IF THE VOTER WAS AT THE PRECINCT AND MADE A MISTAKE TO REFLECT THE BALLOT AS OVERVOTED, UNDERVOTED OR CROSSVOTED, WOULD BE GIVEN A NEW BALLOT AND THE FIRST ONE MARKED "SPOILED". BALLOTS TO BE "DUPLICATED" FROM THE ORIGINAL SHOULD ONLY BE IN THE A.V. BALLOTS WHERE THE VOTER WAS NOT PRESENT.

THE POLL BOOK KEPT BY WORKERS ON ELECTION NIGHT WOULD ALSO SERVE TO PROVIDE EXPLANATION OF THE BALLOTS ISSUED. TOWNSHIP CLERKS WERE NOTIFIED OF THE RECOUNT AND WERE TO MAKE THEMSELVES AND THEIR PRECINCT WORKERS AVAILABLE FOR COMMENT.

CLERK ALBERTSON INFORMED CANVASSERS, THE RECOUNT INCLUDED THREE (3) A.V. COUNTING BOARDS FROM THE CITY OF BAY CITY AND THE TOWNSHIPS OF HAMPTON, MONITOR AND BANGOR. THE TOTAL VOTES CONFIRMED BY THE CANVASSERS AT THEIR INITIAL CANVASS WERE TO STAND AS CERTIFIED, WHEN NOT INCLUDED IN THE RECOUNT.

ONCE THE BALLOT CANS WERE OPENED AND THE TOTAL NUMBER OF BALLOTS CONFIRMED WITH THE POLL BOOK, THE BALLOTS WERE TO BE PLACED INTO PILES INCLUDING 25 BALLOTS FOR CALLING OUT LOUD TO THE TALLY CLERKS. VOTES FOR EACH CANDIDATE WERE TO BE CALLED OUT LOUD WITH AN OPPORTUNITY FOR THE CHALLENGERS TO EXPRESS A CHALLENGE OF THE CALL, SHOULD THEY WISH TO DO SO. ANY CHALLENGED BALLOT WOULD BE MARKED BY THE SECRETARY AND PLACED

ASIDE FOR FUTURE DETERMINATION. TALLY CLERKS WERE TO COMMUNICATE THEIR TALLY TOTALS ON A REGULAR BASIS. ANY DIFFERENCE IN VOTE TOTALS WERE TO BE RECALCULATED BY THE CALLING OF THE LAST 25 BALLOTS OVER FOR A SECOND TIME. THE CHAIRMAN TOLD THE CANDIDATES AND CHALLENGERS, OBSERVATION OF THE BALLOTS COULD BE MADE BUT THAT NO ONE WAS ALLOWED TO PHYSICALLY HANDLE THE BALLOT UNLESS THEY WERE A DESIGNEE OF THE BOARD OF CANVASSERS.

FOLLOWING SOME OTHER BRIEF INQUIRIES, WALT WOZNIAK POSED THE MOTION FOR ADJOURNMENT OF THIS SESSION:

MOTION #2: WALT WOZNIAK MOVED TO ADJOURN THE SESSION OF THE BOARD OF CANVASSERS CALLED TO ESTABLISH THE RULES IN THE RE-COUNT OF VOTES FOR THE BAY COUNTY SHERIFF AND 2ND DISTRICT BAY COUNTY COMMISSIONER. IT WAS SUPPORTED BY WILSON BERGER AND THE MEETING WAS ADJOURNED AT 10:15 A.M.

Don Chevalier

Donald C Chevalier

Walt Wozniak

Wilson Berger

Dolores Niedzinski